In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-189

MARY IM, ET AL., PETITIONERS

v.

WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners, infant citizens of the United States, contend that deportation of their parents abridges their rights as citizens.

Petitioners were born in this country while their parents, citizens of Korea, were here as non-immigrants. On December 10, 1973, petitioners brought an action in the United States District Court for the Western District of Pennsylvania seeking to enjoin enforcement of orders of voluntary departure which had been served on their parents on September 26, 1973. The district court dismissed the action on December 17, 1973, on the government's motion, and a written order of dismissal (Pet. App. B) was entered on June 10, 1974. In that written order the district court stated that petitioners had failed to state a cause of action and that in any event the court lacked jurisdiction to consider the claim. The court of appeals affirmed (Pet. App. A).

The district court correctly determined that it lacked jurisdiction since "[t]here is neither statutory nor decisional authority permitting district courts to entertain actions by the relatives of aliens to intervene in pending deportation proceedings," *Agosto* v. *Boyd*, 443 F. 2d 917 (C.A. 9); and petitioners have suffered no "legal wrong" as a result of the deportation order, *Dayao* v. *Staley*, 303 F. Supp. 16 (S.D. Tex.), affirmed, 424 F. 2d 1131 (C.A. 5).

Even assuming *arguendo* that the court had jurisdiction, the court was plainly correct in ruling that petitioners had failed to state a claim upon which they were entitled to relief. It is well settled that a deportation order directed against the parents of an infant citizen does not violate the child's constitutional rights.[1] See, *e.g.*, *Faustino* v. *Immigration and Naturalization Service*, 302 F. Supp. 212 (S.D.N.Y.), affirmed, 432 F. 2d 429 (C.A. 2), certiorari denied, 401 U.S. 921; *Perdido* v. *Immigration and Naturalization Service*, 420 F. 2d 1179 (C.A. 5); *Mendez* v. *Major*, 340 F. 2d 128 (C.A. 8).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1974.

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[1]Petitioner's reliance upon *Afroyim* v. *Rusk*, 387 U.S. 253, is misplaced. In *Afroyim*, this Court held that Congress could not divest a person of his United States citizenship absent his voluntary renunciation thereof. Here, however, petitoners are free to remain in the United States if they wish.